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OFFICE OF PETITIONS

In re Application of :
Grosse-Wiesmann :
Application No. 10/655,110 :
Filed: September 4, 2003 :
Attorney Docket No. 09796503-0155 :

ON PETITION

This is a decision on the petition filed June 14, 2004, to accord the above-identified application a filing date of September 4, 2003.

The petition is **granted**.

On September 4, 2003, the application was filed.

On May 5, 2004, for an unknown reason, petitioner sent a copy of the original drawings to the Office by facsimile transmission. The drawings were *incorrectly* scanned into the electronic file wrapper with a date of September 4, 2003, rather than May 5, 2004.

On May 14, 2004, the Office of Initial Patent Examination mailed a Notice stating that drawings were not present and that a filing date had not been accorded and the filing date would be the date of receipt of drawings. The Office assumes the May 5, 2004 drawings had not been matched with the file as of that date.

On May 28, 2004, the Office of Initial Patent Examination *incorrectly* took the following steps:

- (1) withdrew the May 14, 2004 Notice, and
- (2) assigned a filing date of September 4, 2003, even though the record failed to contain drawings filed on that date. The file did contain copies of drawings allegedly filed on that date. However, the Office of Petitions had *not* granted a petition for a filing date of September 4, 2003.

On June 14, 2004, the instant petition was filed alleging that drawings were filed on September 4, 2003. In support, petitioner has submitted a postcard receipt which acknowledges receipt of 17 sheets of drawings on September 4, 2003.¹ Petitioner has also submitted a copy of the missing documentation along with a statement that the copy is identical to the drawing submitted on September 4, 2003.

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

Upon review of the record, the drawings filed on September 4, 2003, have not been located. However, the evidence is convincing that the application papers deposited on September 4, 2003, included drawings and that the drawings were subsequently misplaced in the PTO. Therefore, the application is complete and entitled to a filing date of September 4, 2003.

No petition fee is required and none has been charged.

The Notice mailed May 14, 2004, was sent in error and is hereby vacated.

The Office of Initial Patent Examination will be notified to further process the file using a filing date of September 4, 2003, using the papers filed on that date and the copy of the 17 sheets of drawings filed with the petition on June 14, 2003. The copy of the drawings filed on May 5, 2004, should not be used since petitioner has not stated they are identical to the original drawings and the Office will not make an unnecessary, detailed review of the drawings to ensure they are 100% identical.

Telephone inquiries may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
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Office of Petitions